

Arizona Legal Workers Act Questions & Answers

Q: What is the purpose of the contractor reporting requirement for the Arizona Legal Workers Act and how does it relate to procurement?

A: The purpose behind the contractor reporting requirement is to warrant that a contracted vendor is in compliance with the Arizona Legal Workers Act (ARS §41-4404). It also protects the State against any litigation (State and federal) that may arise from a contracted vendor who knowingly hired an undocumented worker. The list also provides the State with a basis for review, if needed. Since procurement is on the forefront it is important that they ensure the requirements are followed.

Q: What exactly is the Arizona Legal Workers Act?

A: The Arizona Legal Workers Act, sometimes called the “Employer Sanctions Law,” went into effect on January 1, 2008. That law was amended in several respects by the Arizona Legislature, effective May 1, 2008. The Arizona Legal Workers Act, as amended, prohibits businesses from knowingly or intentionally hiring an “unauthorized alien” after December 31, 2007. Under the statute, an “unauthorized alien” is defined as “an alien who does not have the legal right or authorization under federal law to work in the United States.” The law also requires employers in Arizona to use the “E-Verify” system (a free web-based service offered by the federal Department of Homeland Security) to verify the employment authorization of all new employees hired after December 31, 2007.

Q: Does Federal law require all employers to use the E-verify system?

A: There is no requirement in Federal statute for all employers to use the service – it is optional – except for Federal contractors, who are required to utilize the service.

Q: How would we "audit" the contract for compliance with only the employee names and no Social Security Numbers (and birthdates) and no access to E-verify?

A: Verifying the employment eligibility of a contractor's employee should be done by the contractor's human resources department. The State is simply requesting the contractor warrant that this process has already been done.

Q: As a delegated State agency what can I use to guide me and ensure I am in compliance with the Act?

A: Technical Bulletin No. 13 and the Standard Operating Procedure, *Contractor Compliance with the Arizona Legal Workers Act*, located on the SPO website (<http://azdoa.gov/spo>) will help guide agencies through this process.

Q: What is the difference between the Technical Bulletin No. 13 and the Standard Operating Procedure?

A: The Technical Bulletin basically states the policy of the Arizona State Procurement Office. The Standard Operating Procedure details the actual procedure which the State will follow and go into more detail.

Q: If a contractor has a large number of employees who work on, or who may work on the contract, is the contractor still required to list all of the names?

A: The State realizes that it may be unreasonable for a large contractor to list all employees that work on the State contract. Larger contractors may have many people in various locations who may be marginally involved in the contract. Bring such situations to the attention of SPO Compliance. Keeping this in mind, the State will review this on a case-by-case basis and determine the best approach.

In the past, contractors with more than 250 employees were permitted to issue a blanket warranty to satisfy the requirement. This issue is still under review and a formal amendment to the standard operating procedure will be posted if and when a change is made.

Q: If my agency's delegation is less than \$50,000 will I still be required to follow the Arizona Legal Worker's Act requirements?

A: Only formal solicitations (\$50,000 plus) will be subject to the reporting requirement. The State Procurement Office will report solicitations of less than \$50,000 that they conduct for agencies with limited delegations. If an agency receives a one-time waiver to conduct a solicitation above its delegated authority, the contract(s) resulting from the solicitation should be reported.

Q: Where can I get the forms and spreadsheets that I will need to use?

A: All forms and spreadsheets can be found on the SPO website (<http://azdoa.gov/spo>) under SPO-Agency & Coop Resources / Procurement Documents and Forms / SPO Technical Bulletins.

Q: The forms seem a little complicated and do not allow me to download from my system. Must I use these exact forms?

A: Yes. The pool from which contracts are randomly selected for review are from a comprehensive list of all contracts compiled by SPO for each quarter. In order to facilitate combining all contractors into one list, the format must be standardized.

Q: Can you give me a brief breakdown of the process?

A: The process will work like this:

1. Agencies will list all contracts (of \$50,000 and more) in the Excel spreadsheet format provided in the Standard Operating Procedure and e-mail the completed spreadsheets to SPO Compliance.
2. SPO Compliance will use a random sampling program to select approximately 10% of the individual contracts for review from each agency.
3. SPO Compliance will return the spreadsheet to each agency showing the list of randomly selected contractors.
4. The agency will then send letters to the selected contractors requesting they verify (warranty) the employment authorization of all new employees hired after December 31, 2007 who works on the State contract.
5. If the contractor does not respond to the agency's first request, the contractor is given two more chances (see SOP 2.4.1.1). If, after three notices, the contractor has not responded the agency completes a Vendor Deficiency Report and places it in the contractor's file.
6. If a contractor does not comply by not responding after three attempts, the contractor is in breach and the agency notifies the Attorney General's Office by submitting a copy of the vendor deficiency report and the verification forms and worksheet (SOP 2.4.1.4.1 & 2.4.1.4.2). The

agency may take additional action, up to and including termination of the contract, as is appropriate for the situation (SOP 2.4.1.7) or as the agency deems in the best interest of the State. SPO does not make the determination of how to address the breach. This is the agency's discretion.

7. If a contractor responds that it will not comply or is not in compliance, take the same actions as in step 6 above.
8. If the contractor fails to respond or responds that it will not comply or is not in compliance, the agency notes this in the Contractor/Subcontractor Employment Verification Excel Reporting form. In any case, the agency submits the Contractor Employment Record Verification Form and the Employee Verification Worksheet to SPO on the regular schedule for reporting (SOP 2.4.1.7)

Please note that this is just a simplified version of the process. Agencies must read and follow Technical Bulletin No. 13 and Standard Operating Procedure for Contractor Compliance with the Arizona Legal Workers Act.

Q: Who can I contact at SPO if I have any questions?

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Q: Do I need to include grants in the reporting process?

A: Yes, grants that meet the financial threshold must be reported. An "Employer" is defined in ARS §23-211 to include the State and political subdivisions. ARS §23-214 then states that any grant from a "government entity" to any "employer" (including the State and political subdivisions) require the "employer" to provide proof that it is registered with and is participating in the E-Verify program. The only exceptions listed are tax related programs i.e. tax credits.

Q: What about Interagency Service Agreements (ISAs) and Intergovernmental Agreements (IGAs)?

A: Generally speaking, the Attorney General's Office does not consider State agencies to be "Contractors" as that term is used in the statute. Therefore, the State has determined that ISAs are **not** affected by the Arizona Legal Workers Act.

There has not been any official opinion by the Attorney General's Office on IGAs as of yet. The State has not insisted that the Arizona Legal Workers Act language be included with the federal government, cities, towns or counties. The Attorney General's Office is also looking into school districts, fire districts, domestic water improvement districts, and other political subdivisions or the tribes. In the case of the smaller districts and tribes, it may be appropriate for the State to insert the Arizona Legal Workers Act language in any agreement for services.